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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Gerd BRANDHORST et al.

Serial No. 09/368,505

Group Art Unit: 3754

Filed: August 5, 1999

Examiner: P. DERAQSHANI

For: DEVICE FOR EMPTYING A FILM TUBE

REPLY BRIEF

Mail Stop APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

This is in reply to the Examiner's Answer dated August 4, 2003.

It is first noted with appreciation that the rejections based on the alleged introduction of new matter have been withdrawn. Thus, the issue denoted as "A" no longer applies. Original claims 1-5 and reissue claims 6-10 now stand allowed.

The rejection of claims 11-38 under 35 U.S.C. § 251 as allegedly being an improper recapture of broadened claimed subject matter surrendered in the application for patent upon which the present reissue is based is still being maintained by the Examiner.

As explained in Appellants' principal brief, starting at page 9, the limitation omitted from reissue claim 11, the "ring supporting surface", had

nothing to do with the patentability of the original patent claim 1 and, in fact, was part of the prior art. The prosecution history of the patent shows that application claim 3, which was rewritten in independent form and eventually became patent claim 1, was allowed on the first action without any explanation of reasons for allowance. As is apparent from the language of the original claims, the only limitation that delineated original application claim 3 from application claims 1 and 2 was the recitation that "said end portions of the housing and the cap having such axial dimensions that a play is retained between their mutually facing surfaces". In the Examiner's Answer, the Examiner now contends that original application claim 3 was allowed because of the "gap" or "play" between both supporting surfaces.

This statement is not accurate. Original application claim 3, now patent claim 1, and reissue claim 11 all use the same language in defining the boundaries of the gap, that is, "mutually facing surfaces of said end portions of the housing and the cap". The word "supporting" does not appear there. For ease in comparing patent claim 1 and reissue claim 11, claim 11 is reproduced below with language from patent claim 1 included but indicated by strike out and language new to claim 11 being underlined.

11. A device for emptying a film tube which contains a flowable substance and has a dispensing end provided with a ring, the device comprising a cylindrical housing with a displaceable piston and a cap and being adapted to receive the tube between said piston and said cap,

~~said housing having an inner diameter and including an end portion having a ring support surface,~~

wherein the cap ~~having~~ has a dispensing opening, an annular engaging portion surrounding the dispensing opening and cooperating in use with said ring for sealing ~~a~~ the dispensing end of the film tube, and a cylindrical end portion adapted to engage the an end portion of the housing, ~~said ring having a peripheral portion which exceeds the inner diameter of the housing for engaging said ring supporting surface, and~~

wherein a gap remains between mutually facing surfaces of said end portions of the housing and the cap when said housing, cap and tube are assembled with said ring abutting said annular engaging portion of the cap ~~and the peripheral portion of said ring abutting said supporting surface of said housing.~~

From reading this comparison, it is abundantly clear that the ring support surface which is eliminated from claim 11 has absolutely nothing to do with defining the boundaries of the gap, that is, being structurally related to the gap.

This being the case, it is respectfully submitted that the rejection is erroneous and should be reversed.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any such fee or any deficiency in fees or credit any overpayment of fees to Deposit Account No. 05-1323 (Docket #1860/48111RE).

Respectfully submitted,



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August 25, 2003

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